

# CITY OF FAYETTEVILLE REQUEST FOR PROPOSALS



## RECYCLING PROCESSING FACILITY COF1516791

ISSUED: MARCH 30, 2023

DUE: MAY 1, 2023

The City of Fayetteville is soliciting bids for qualified vendors to provide all facilities, equipment, labor, and services required for the receiving, processing transporting, and marketing all Single Stream Recyclables delivered by or on behalf of the City to an agreed-upon facility.

ISSUED BY:  
CITY OF FAYETTEVILLE

PRIMARY CONTACT:  
KIMBERLY TOON,  
PROCUREMENT MANAGER  
[kimberlytoon@fayettevillenc.gov](mailto:kimberlytoon@fayettevillenc.gov)

(910) 433-1942

OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.



**A message from the City of Fayetteville City Manager, Douglas J. Hewett, ICMA-CM**

The City of Fayetteville is fully committed to provide Small Local Business Enterprises (SLBE's) an equal opportunity to participate in all aspects of City contracting including, but not limited to participation in the procurement of contracts relating to the construction of and improvements to facilities throughout the City. It is also the policy of the City to prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, sex, color, religion or national origin and to conduct its contracting and purchasing programs so as to prevent such discrimination. The City is also committed to follow all applicable State and Federal law as they relate to procurement practices.

The City will actively seek and identify qualified SLBE's and offer them the opportunity to participate in the procurement of contracts for all City purchasing and service contracts as well as construction and repair contracts.

The City aspires to spend 40% of its eligible contract dollars with small local suppliers and contractors. Towards this end the City's Charter has been amended by the General Assembly (H.B. 198) to allow the City to establish a race and gender neutral small business enterprise program to promote the development of small local businesses. The City is authorized to establish bid and proposal specifications that include subcontracting goals and good-faith effort requirements to enhance participation by small business enterprises located in Cumberland and Hoke Counties.

For more information or questions about the SLBE policy, please contact the Purchasing Division at 910-433-1942.

**CITY OF FAYETTEVILLE**

  
Douglas J. Hewett, ICMA-CM  
City Manager

## **NOTICE TO BIDDERS**

Pursuant to N.C.G.S. 143-129 sealed proposals will be received by the City of Fayetteville, until **2:00 p.m., May 1, 2023** at City Hall, 433 Hay Street, Fayetteville, North Carolina, at which time they will be considered for the purchase of the following:

### **Recycling Processing Facility**

Bids may be mailed to the City Purchasing Office, Attn: Kimberly Toon, 433 Hay Street Fayetteville, NC 28301, or may be delivered in person or by express mail to 433 Hay Street, Fayetteville, NC 28301

The bid opening will be held at **2:00 p.m. on May 1, 2023** at City Hall, 433 Hay Street, Fayetteville, NC 28301, for the project entitled, **“Recycling Processing Facility.”**

Plans, specifications and bid documents may be obtained in the Purchasing Office of the City of Fayetteville, 2<sup>nd</sup> floor, City Hall, 433 Hay Street, Fayetteville, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday or by email request to [kimberlytoon@fayettevillenc.gov](mailto:kimberlytoon@fayettevillenc.gov)

The right is reserved to reject any or all bids and to waive all informalities concerning bid or award bid to the lowest, responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

**City of Fayetteville**

Kimberly Toon, CLGPO  
Purchasing Manager



## INTRODUCTION

The City of Fayetteville (NC) seeks proposals from qualified Vendors to provide all facilities, equipment, labor, and services required for the receiving, processing, transporting, marketing and disposal of all Single Stream Recyclables delivered by or on behalf of the City to an agreed-upon facility. The City's recycling volume is approximately 7000 tons a year. Please note the City aims for a fixed rate for recycling materials delivered by the City or contracted vendor. As further detailed in the PROPOSAL REQUIREMENTS section, the "Scope of Services" are each contained within the following categories of enhanced service elements:

- General Information
- The City's responsibilities
- The Vendor's responsibilities
- Public Education
- Invoicing
  - The City of Fayetteville, NC, desires a fixed rate without revenue sharing but will receive proposals with/without recycling revenue sharing.

## PROPOSAL SUBMITTAL

RFP submissions must follow the format as defined in **Proposal Submittal**. A total of four (4) hard copies of the completed proposal shall be submitted to the City of Fayetteville Purchasing Office by **2:00 p.m., May 1, 2023**. Packages should be plainly and visibly marked on the outside with the Proposer's name and **"Recycling Processing Facility."**

Qualifications packages shall be mailed or personally delivered to:

**City of Fayetteville**  
**Purchasing Department**  
**Attention: Kimberly S. Toon, Purchasing Manager**  
**433 Hay Street**  
**Fayetteville, NC 28301**

Submittals shall be limited to a maximum of fifty (50) double-sided standard typewritten pages (8½" x 11", font size 10 or larger). Promotional literature, brochures, etc. will be considered as part of the page limit. The front and back cover, tabs, acknowledgement of addendum, as well as exhibits will not be counted toward the page limit. Packages which exceed the page limit may be rejected as non-compliant. The electronic version must be submitted as a high quality viewable and printable Portable Document File (PDF). Qualifications packages must be enclosed in a sealed envelope or package and clearly marked: **"Recycling Processing Facility."**

## QUESTIONS

Prospective offerors can submit all questions via email to [kimberlytoon@fayettevillenc.gov](mailto:kimberlytoon@fayettevillenc.gov) by April 21, 2023, 5:00 p.m. Answers to questions will be provided via addendum on the City's website by April 26, 2023, 5:00 p.m. Please title the subject line of the email as **"Recycling Processing Facility."**

It is the offeror's responsibility to ensure that all addenda have been reviewed, signed and returned.



A signed copy of each addendum must be included in the proposal package in the appendix section. Prospective vendors are strictly prohibited from contacting any City official or employee regarding this Request for Proposal, except in the manner prescribed above. Violation of this provision may result in disqualification of the firm's submittal.

Table of Deadlines

Action	Date and Time	Location/Other
<b>Proposers written questions to be addressed</b>	Due by April 21, 2023, 5:00 p.m.	Email: <a href="mailto:kimberlytoon@fayettevillenc.gov">kimberlytoon@fayettevillenc.gov</a>
<b>Posting of questions on City website</b>	April 26, 2023, 5:00 p.m.	City Website
<b>RFQ Due Date - Qualifications due from Proposers</b>	May 1, 2023, 5:00 p.m.	City of Fayetteville Purchasing Department Attention: Kimberly S. Toon, Purchasing Manager 433 Hay Street Fayetteville, NC 28301

## SUBMITTAL REQUIREMENTS

The qualifications package shall consist of the following information, tabbed as identified and in the order indicated. A firm who submits a package that does not follow the order or address each of the sections specified below may be deemed non-responsive.

### 1. Letter of Transmittal/General Information/Executive Summary

- A. Provide company's name, year established, address, telephone number, email address and contact person. Briefly describe your company's operating history, and must include the signature of an individual who is authorized to bind the Proposer contractually.
- B. Name, title, address, telephone number, and e-mail of contact person during period of the proposal evaluation.
- C. A statement to the effect that the proposal shall remain valid for a period of not less than ninety (90) calendar days from the deadline date established for submissions.
- D. Provide a statement letter that the firm will provide Certificate(s) of Insurance with limits as required in the General Services Agreement; if the firm is selected.
- E. Identify if the vendor is classified as a Disadvantaged Business Enterprise.
- F. State any conflicts of interest your vendor or any key individual may have with the City. List any pending or settled lawsuits or professional liability claims in which the company was involved during the past five (5) years.
- G. Concisely address the highlights of the proposal, along with the strengths and expertise of the company and the team proposed to successfully accomplish the proposals objectives.

## **2. Personnel Qualifications**

- A. Provide a resume detailing professional qualifications of key management and staff personnel to be assigned to the proposal.
- B. Provide a description of proposed involvement of subcontractors, including potential uses and responsibilities.

Note: Substitution of other personnel after the selection is made must be approved by the City.

## **3. Project Understanding, Approach and Schedule**

This section shall include, in narrative, outline, and/or graph form the vendor's approach to accomplishing the tasks outlined in the Scope of Work section of this RFP. Clearly define the tasks and activities necessary to meet the objectives outlined in the Scope of Work of in this RFP. This section must include a statement of Proposer's understanding of the services being sought by the City, and include a description of Scope of Work for accepting and processing recyclables. This should also include responses to each of the following questions:

- A. What resources your company will use to address this proposal: people, equipment, software, etc.
- B. Provide a narrative to demonstrate how well the company understands the purpose and scope of the project.
- C. Describe your scope (methodology, data collection, quality control/quality assurance, etc.) to address each bulleted point outlined in Scope of Work. This should include the tasks and narrative of how your company will comply with the Scope of Work and what special services and products your company has to meet our needs.
- D. Describe why your company should be selected to include any unique qualities which you feel make your company well-suited to perform the work.
- E. Provide your past experience in completing similar or larger projects that can contribute to achieving the objectives of each of the bulleted items set out in the Scope of Work.

## **4. Experience and Expertise**

- A. Have a minimum of 5 years of experience processing recyclable material,
- B. Have a minimum of 5 years of experience marketing and selling recyclable material,
- C. Have a minimum of 5 years of technical expertise in material recovery and recycling,
- D. Provide sufficient financial information to describe the financial condition and strength of the company,
- E. Provide qualified staff to handle the day-to-day operations of receiving and processing recyclable material, and
- F. Have the necessary facilities, equipment, and employees to operate a Transfer Station or MRF.
- G. Include a description of Contractor's current and past experience providing services similar to those that the County seeks. This section must include a list of clients to



whom similar services have been provided within the past three (3) years. The list of clients must include accurate name, phone number, and email address of contact person. Current and / or past clients may be asked by County to provide reference for Proposer.

- H. Data Management - Contractor's data management system for acquiring and tracking customer and materials data. Also includes what method will be utilized to provide accurate reports by material to the City.
- I. Provide five (5) References (Exhibit B)

## **EVALUATION AND AWARD**

### **Evaluation**

Proposals will be evaluated by a committee composed of City officials and/or key management staff familiar with these types of services. Proposals will be evaluated and ranked based on the requirements stated herein. The City intends to award a contract to the agency/organization that demonstrates the experience, skill, and capacity to meet the City's requirements as outlined herein. The City reserves the right to accept or reject any proposal.

<b>Criteria</b>	<b>Weight</b>
<b>Letter of Transmittal/General Information/Executive Summary</b>	10
<b>Personnel Qualifications</b>	10
<b>Project Understanding, Approach and Schedule</b>	10
<b>Experience and Expertise</b>	10
<b>Proposal cost</b>	60

## **TERM OF CONTRACT**

The City of Fayetteville, NC, intends to enter a single, exclusive Contract with a selected Provider for Thirty-Six (36) months, from **July 1, 2023, through June 30, 2026**. After the initial term, the agreement may be extended for up to two (2) year terms upon the parties' mutual agreement expressed in writing prior to the conclusion of the current term.



## **SCOPE OF WORK**

### **BACKGROUND**

The City of Fayetteville, North Carolina, located in Cumberland County and home to one of the world's largest military installations (Fort Bragg), is the sixth largest City in North Carolina with a population exceeding 208,000. Located along the Cape Fear River and Interstate I-95, Fayetteville is a three-time recipient of the prestigious "All America City" designation awarded by the National League of Cities. With a traditional, urban core Downtown, anchored by the Hay Street corridor and containing an impressive inventory of historic buildings housing a growing array of restaurants, specialty retailers, loft housing, and arts and entertainment venues, a number of efforts are underway further to revitalize the Downtown as an Arts & Entertainment destination. Such measures include a \$33M Minor League Baseball stadium designed as the home of the Class-A-Advanced affiliate of the Houston Astros as well as significant, mixed-use private sector developments surrounding the stadium that will include a hotel, restaurants, retail and urban residential units.

Solid Waste services approximately 63K residents. The City desired to move from weekly recycling to biweekly recycling. This effort was to align the recycling collections with best practices and other Cities in NC. Waste Management, who handled where the City's recycling went, agreed to open the contract to move to biweekly recycling but also desired not to renew their contract with the MRF. For the first time since the City of Fayetteville started recycling, the City would have to negotiate with a recycling receiving facility to process the City's recycling. Beginning July 1, 2022, the City contracted with Sonoco to receive recyclables delivered by Waste Management. Under the existing contract, the City agrees to deliver, or have delivered on its behalf, to Sonoco the entire accumulation of acceptable recyclable material generated and collected by or on behalf of the City.

## **General Information**

The City of Fayetteville, NC, is seeking qualified Responders to provide all facilities, equipment, labor, and services required for the receiving, processing, transporting and marketing of all Single Stream Recyclables managed by the City of Fayetteville, NC, and delivered by or on behalf of the City to an agreed upon the facility.

This includes:

- All materials collected by City collection crews; and
- All materials collected by a private hauler under contract with the City of Fayetteville NC.

Contractors must accept recyclables for processing and marketing at an agreed-upon facility. The contractor must furnish sufficient facilities, equipment, labor, financial capability, and experience to begin receiving materials from the City by July 1, 2023. Contractor facilities shall maintain clean, safe, and efficient procedures for queuing, weighing, unloading, screening, and vehicle departure to assure efficient use of the facility by the City or hauler contract with the City.

The Contractor shall accept all acceptable recyclable materials delivered to the agreed upon facility. The agreed upon facility shall have sufficient capacity and availability for unloading, storage, transfer, or other processing of materials so as not to impair delivery of materials from the City or hauler contract with the City.

The Contractor shall:

- have a minimum of 5 years of experience processing recyclable material,
- have a minimum of 5 years of experience marketing and selling recyclable material,
- have a minimum of 5 years of technical expertise in material recovery and recycling,
- provide sufficient financial information to describe the financial condition and strength of the company,
- provide qualified staff to handle the day-to-day operations of receiving and processing recyclable material, and
- have the necessary facilities, equipment, and employees to operate a Transfer Station or MRF.

### **The City of Fayetteville shall:**

1. The City of Fayetteville, NC, will provide recyclables following the accepted recyclable materials currently collected by the City or contracted City vendor. The following recyclable materials are collected:
  - a. Single Stream (See acceptable materials)
2. The City of Fayetteville, NC, will make periodic inspections of any facility the Contractor uses to process material received from the City.

### **Provider shall**

1. Accepted recyclable materials currently collected by the City:
  - a. Single Stream to include:
    - i. Glass (bottles and containers only): Brown, Clear and green
    - ii. Aluminum cans



- iii. Steel cans
  - iv. Plastic bottles
  - v. Water bottles
  - vi. Milk jugs
  - vii. Detergent containers
  - viii. Newspapers, including inserts and magazines
  - ix. Mixed paper
  - x. Office paper
  - xi. "Junk mail"
  - xii. Brown paper bags
  - xiii. Phone books
  - xiv. Catalogs, magazines
  - xv. Clean aluminum pie pans, food trays
  - xvi. Clean food and beverage cartons, such as milk (dairy, soy, almond), juice, soup and broth, and wine
  - xvii. Corrugated Cardboard and food/cereal boxes
2. Accept recyclable materials from rear or side loader trucks in roll-off containers, tractor trailers, open-top containers, compactor trucks, enclosed compactor containers, and bales.
  3. Receive and process all recyclable materials in the 'as-is' condition, with no guarantees to the value or condition of the materials. Some materials may be mixed and require additional separation before processing. This is not referring to contamination.
  4. Accept recyclable materials Monday through Friday between 6 am and 6 pm.
  5. The holiday recycling schedule is to continue with the existing collection schedule for the City of Fayetteville, as the only holiday delays are for Thanksgiving and Christmas. The vendor must be available to receive recyclables on the Saturdays after Thanksgiving and Christmas to recover those holiday collection routes. Holiday Schedules are released at the end of each Fiscal Year approximately June 30. Provider shall work on or be able to receive recycling on Holidays when the City's contracted vendor collects recycling.
    - a. The following shall be the Holidays for the purpose of this agreement:
      - i. New Year's Day
      - ii. Martin Luther King, Jr. Day
      - iii. Good Friday
      - iv. Memorial Day
      - v. Juneteenth
      - vi. Independence Day
      - vii. Labor Day
      - viii. Veteran's Day
      - ix. Thanksgiving Day
      - x. Christmas day
  6. Accommodate tipping of material at a rate such that trucks delivering recyclables can approach the site, enter, weigh in, tip all materials, and depart the site with a turn-around time of less than 30 minutes.
  7. Comply with OSHA regulations concerning the storage, transport, and disposal of recyclable materials.



8. Comply with local, state, and federal regulations concerning recyclable materials processing, storage, and transport.
9. The Contractor must have calibrated truck scales to record the weight of all delivered loads. The facility shall have a process to accurately record the weight and time of all deliveries so that material quantities can be accurately weighed and accounted for reporting and calculating recycling received.
10. The selected Contractor will be required to provide monthly, quarterly, and annual reports to the City of Fayetteville's Solid Waste Division of the total quantities of recyclables accepted and associated processing fees for recyclables and recycling revenues, if applicable.
11. Contractor facilities, and public right of ways adjacent to facility shall be maintained in a clean and safe manner. Contractor facilities will allow for efficient procedures for queuing, weighing, unloading, screening, and vehicle departure to assure efficient use of the facility by the City or hauler contracted with the City.
12. The City of Fayetteville, has the right to make periodic inspections of any facility that the Contractor uses to process material received from the City.

## **PUBLIC EDUCATION**

The Contractor will outline how they will assist the City of Fayetteville, NC, in providing public education services related to the recycling program. Public education assistance shall include providing culturally, and relevant materials and messages in selected languages.

## **INVOICING / RECYCLING REVENUES (if applicable)**

The Contractor will provide monthly invoices to The City of Fayetteville, NC. The Contractor's invoices will show the detailed Fee formula calculation, with current, accurate values, documenting the fee owed or rebate due. The invoice shall explicitly list the following elements for single stream recyclables:

- Current month average market values (AMV)
- Processing Fee
- Contamination Handling Fee

Average Market Value or "AMV" means the aggregate value of the bundle of Single Stream Recyclables, source-separated OCC, or source-separated Bulky Rigid Plastics, according to the market index used to determine the revenue paid by the Contractor to the City of Fayetteville, NC.

**Contamination Handling Fee:** The fee to process and dispose of contaminants contained in inbound deliveries.

**Processing Fee** means the dollar (\$) amount per ton charged on all recyclables delivered by the City of Fayetteville, NC, to the Contractor.

## **KEY CONTRACT TERMS AND CONDITIONS**

- Proposals shall be firm for acceptance by the City with starting date of July 1, 2023.
- Proposals must be submitted in a sealed envelope; no faxed or e-mailed proposals will be accepted.
- The City reserves the right to award this contract in whole or in part in the City's best interest. The City further reserves the right to accept or reject all proposals.
- The City reserves the right to request additional information necessary to make a qualified judgement as to the offering organization/agency's ability to perform the work.

**Proposal**  
**Accepting Recycling Materials Fee**

For furnishing all labor, equipment, materials, mobilization, and other incidentals required for the receiving, processing, transporting, and marketing all Single Stream Recyclables delivered by or on behalf of the City of Fayetteville, NC to an agreed-upon facility:

**Description: Quantity: Unit Price: Costs:**

**Processing Fee:** A Processing Fee of \$ \_\_\_\_ . \_\_\_\_ per Ton shall be charged on 100% of the inbound tonnage delivered.

**Contamination Handling Fee:** A contamination handling fee to process and dispose of contaminants contained in inbound deliveries will be \$ \_\_\_\_ . \_\_\_\_ per Ton.



**Exhibit A: References**

(Vendor must supply five (5) references of clients for whom similar work was performed.)

---

Reference Company Name:

\_\_\_\_\_

Contact: \_\_\_\_\_

Phone#: \_\_\_\_\_

Nature of work performed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

Reference Company Name:

\_\_\_\_\_

Contact: \_\_\_\_\_

Phone#: \_\_\_\_\_

Nature of work performed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

Reference Company Name:

\_\_\_\_\_

Contact: \_\_\_\_\_

Phone#: \_\_\_\_\_

Nature of work performed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

---

---

---

Reference Company Name:

---

Contact: \_\_\_\_\_

Phone#: \_\_\_\_\_

Nature of work performed:

---

---

---

---

---

---

---

Reference Company Name:

---

Contact: \_\_\_\_\_

Phone#: \_\_\_\_\_

Nature of work performed:

---

---

---

---

---

---

---

**GENERAL SERVICES AGREEMENT FOR CONSULTING SERVICES BETWEEN**

**CITY OF FAYETTEVILLE  
FAYETTEVILLE, NORTH CAROLINA**

**AND**

**CONSULTANT'S NAME HERE**

**DATE**



STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

GENERAL SERVICES AGREEMENT  
FOR CONSULTING SERVICES

**THIS AGREEMENT**, effective the day of \_\_\_\_\_ by and between **THE CITY OF FAYETTEVILLE, NORTH CAROLINA** (hereinafter referred to as **CITY**), with principal business offices at Fayetteville, North Carolina, and **CONSULTANT'S NAME HERE** (hereinafter referred to as **CONSULTANT**), a corporation with principal business offices at **CONSULTANT'S ADDRESS HERE**.

**WITNESSETH:**

**WHEREAS, CITY**, is engaged in the operation and maintenance of facilities and services which from time to time require revision, renovation and extension of existing facilities, and the construction of new facilities and other related projects; and

**WHEREAS**, the professional services of engineers, architects, surveyors and others will from time to time in the future be needed by the **CITY** in the renovation of existing facilities, and in the construction of new facilities and other related projects; and

**WHEREAS**, pursuant to N.C.G.S. 143-64.31 it is the public policy of this State that municipalities announce all requirements for architectural, engineering and surveying services, to select firms qualified on the basis of demonstrated competence and qualification and to negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

**WHEREAS, CONSULTANT** provides professional consulting services of the nature required by the **CITY** and employs trained and experienced engineering, technical and/or other personnel possessing adequate knowledge, skills and experience to provide professional services to the **CITY**; and

**WHEREAS**, the **CITY** proposes to announce to various competing firms its need for professional consulting services in the future by requesting Proposals and the subsequent acceptance of proposals and the issuance of written authorizations to proceed, which together with this Agreement shall constitute a contract between the **CITY** and the **CONSULTANT**; and

**WHEREAS**, the parties contemplate that the services of **CONSULTANT** will be performed in various stages in accordance with separate authorizations to be issued by **CITY**, and the parties desire to set forth the basic terms of their agreement in this General Services Agreement rather than in separate authorizations to be issued by **CITY**.

**NOW THEREFORE, IN CONSIDERATION** of the premises and the mutual covenants herein contained, the parties hereto do hereby contract and agree as follows:

**ARTICLE 1 - REQUEST FOR PROPOSAL-SUBMITTAL OF PROPOSAL.** As the need for consulting services arise, **CITY** will request a Proposal for said services from **CONSULTANT** which shall describe the scope of work, program, estimated schedule and **CITY'S** requirements.



If **CONSULTANT** has the qualified personnel to meet **CITY'S** requirements to perform the consulting services requested by the **CITY**, **CONSULTANT** will submit to **CITY** within the time specified a written Proposal describing the necessary engineering, technical and/or other services, guidance, opinions and advice to be provided. The Proposal shall set forth in general terms **CONSULTANT'S** recommendations to carry out the work. **CONSULTANT** shall list the background and experience of **CONSULTANT'S** personnel to be assigned to the project. Said Proposal shall contain a fee schedule setting forth fees for services of the various categories of personnel to be assigned to **CITY'S** project.

**ARTICLE 1.1 - ACCEPTANCE OF PROPOSAL.** **CITY** and **CONSULTANT** contemplate certain discussions, negotiations and possible changes to the Proposal submitted by **CONSULTANT**. Upon a meeting of the minds, **CONSULTANT** shall submit the final Proposal which shall set forth the agreement of the parties. If said Proposal is acceptable, the **CITY** shall accept same in writing. **CONSULTANT'S** fee schedule shall remain in effect during the term of this Agreement, unless modified by the parties in writing. **CITY** shall provide **CONSULTANT** with a specific written Authorization to Proceed for each Proposal accepted by **CITY**.

**ARTICLE 2 - TERM OF AGREEMENT.** The term of this General Services Agreement for Consulting Services shall be for three (3) years from the date it is effective. The Agreement may be extended thereafter by mutual written agreement of the parties.

**ARTICLE 2.1 - ASSIGNMENT.** It is the intent of this Agreement to secure the personal services of the **CONSULTANT** and failure of the **CONSULTANT** for any reason to make the personal services available to the **CITY** for the purposes described in this Agreement shall be cause for termination of this Agreement. The **CONSULTANT** shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of **CITY**. Nothing contained in this paragraph shall prevent **CONSULTANT** from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist **CONSULTANT** in the performance of services rendered.

**ARTICLE 3 - COMPENSATION.** **CONSULTANT** shall submit to **CITY** monthly invoices for services performed during that month, computed on the basis of the Proposal accepted by **CITY**. **CITY** agrees to pay **CONSULTANT'S** monthly invoice within thirty (30) days after said invoice is received by the **CITY**. Adjustments to an invoice for billing errors may extend the time for payment. For clarity, compensation to **CONSULTANT** shall be based upon Task and/or Work Authorizations that are provided to and agreed upon by the **CITY**. The Signing of this General Services Agreement does not bind or obligate the **CITY** to pay **CONSULTANT** any compensation.

**ARTICLE 3.1 - VERIFICATION OF INVOICES.** **CITY** has the right to require the **CONSULTANT** to produce for inspection all **CONSULTANT'S** time records, salaries of personnel and charges for direct expenses for which cost-plus compensation is provided. **CONSULTANT** agrees to provide **CITY** with said records on a timely basis and cooperate with **CITY** to verify the accuracy of all invoices.

**ARTICLE 3.2 - COSTS AND EXPENSES.** **CONSULTANT** will invoice **CITY** for all travel and living expenses of its employees assigned to a project which said expenses shall be at actual cost, unless said costs or expenses are specifically set forth and included in a fixed price contract. Accommodations for **CONSULTANT'S** employees shall be arranged by **CONSULTANT**. Living expenses for **CONSULTANT'S** employees shall be the usual and customary expenses for accommodations to which **CONSULTANT'S** employees are accustomed, and which are prevailing in Cumberland County, North Carolina.

**ARTICLE 3.3 - NON APPROPRIATION.** Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the **CITY** are from appropriations



and monies from the City Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the CITY to pay the terms of this agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the CITY.

#### **ARTICLE 4 - PROFESSIONAL STANDARDS AND DUTIES OF CONSULTANT.**

**CONSULTANT** shall be held to the same standard and shall exercise the same degree of care, skill and judgment in the performance of services for **CITY** as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Cumberland County, North Carolina.

**ARTICLE 4.1 - CONSULTANT NOT RESPONSIBLE FOR CONSTRUCTION MEANS OR SAFETY.** A **CONSULTANT** for general construction projects shall not be responsible for any general contractor's or other project participant's failure to fulfill their contractual responsibilities to the **CITY**, nor shall **CONSULTANT** be responsible for construction means, methods, techniques, sequences, or procedures. Neither shall **CONSULTANT** be responsible for a project safety program or safety precautions unless **CONSULTANT'S** Proposal sets forth a safety program which is accepted by **CITY** and becomes a part of the agreement between the parties.

**ARTICLE 4.2 - CONSULTANT AS CONSTRUCTION MANAGER.** In the event the **CITY** contracts with the **CONSULTANT** to provide Construction Management Services, the **CONSULTANT** shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with the plans and specifications. In no event shall **CONSULTANT** be responsible for any contractor's, subcontractor's, vendor's, or other project participant's failure to comply with federal, state or local laws, ordinances, regulations, rules, codes, orders, criteria, or standards unless it has contracted with the **CITY** to do so.

**ARTICLE 5 - ESTIMATES OF COST AND TIME.** Although **CONSULTANT** has no control over the cost of labor, materials, equipment or services furnished by others, or over contractor's, sub-contractor's, or vendor's methods of determining prices, or over competitive bidding or market conditions, nevertheless **CONSULTANT'S** cost estimates and time estimates shall be made on the basis of current labor and material prices and the **CONSULTANT'S** experience and qualifications, and **CONSULTANT'S** estimates shall represent its best judgment as an experienced and qualified professional familiar with electric, water and sewer utility projects, or other projects for which **CONSULTANT** is employed. Although **CONSULTANT** has no control over the resources provided by contractors to meet contract schedules, nevertheless **CONSULTANT'S** estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent **CONSULTANT'S** best judgment as an experienced and qualified professional familiar with electric, water and sewer utility projects, or other projects for which **CONSULTANT** is employed. **CONSULTANT** does not guarantee that project costs and schedules will not vary from the estimates and schedules given to **CITY**.

#### **ARTICLE 6.0 - LIABILITY, INDEMNIFICATION AND INSURANCE.**

**6.1 - GENERAL.** The **CITY** and **CONSULTANT** have considered the risks and potential liability that may exist during the performance of services by **CONSULTANT**, and have agreed to allocate such liabilities in accordance with this Article. During the performance of services under this Agreement, **CONSULTANT** shall purchase and maintain insurance coverage as hereinafter set forth, without lapse or changes contrary to the requirements of this section. Words and phrases used in this Article shall be interpreted in accordance with customary insurance industry usage and practice.

**6.2 - INDEMNITY AND PROFESSIONAL LIABILITY.** To the extent permitted by law, **CONSULTANT** agrees to defend, indemnify and hold harmless the **CITY** and its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage caused by any negligent or tortious act, omission or negligence of **CONSULTANT**, its agents, servants,



employees, contractors, licensees, or invitees. Indemnification of the **CITY** by **CONSULTANT** does not constitute a waiver of the **CITY'S** governmental immunity in any respects under North Carolina law. **CONSULTANT** agrees to purchase and maintain professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000 coverage for each claim, with a general aggregate of \$2,000,000. Said insurance coverage shall be underwritten by an insurance company authorized to do business in the State of North Carolina by the North Carolina Department of Insurance, with an A.M. Best rating of not less than A-VII.

**6.3- LIABILITY INSURANCE.** **CONSULTANT** agrees to defend, indemnify and hold the **CITY**, its servants, agents and employees, harmless from and against all liabilities, claims, demands, suits, losses, damages, costs and expenses (including attorney's fees) for third party bodily injury to or death of any person, or damage to or destruction of any third party property, to the extent caused by the negligence of the **CONSULTANT**, Consultant's employees, and Consultant's subcontractors, for whom **CONSULTANT** is legally responsible during the performance of services under this Agreement. **CONSULTANT** shall purchase and maintain at all times during performance of services under this Agreement Commercial General Liability Insurance with combined single limits of \$1,000,000.00 coverage for each occurrence with a general aggregate of \$2,000,000.00, designating the **CITY** as an additional insured and which said insurance provides **CONSULTANT** with insurance for contractual liability which **CONSULTANT** has assumed pursuant to the terms of this Article 6.

**6.4- OTHER INSURANCE.** In addition to professional liability insurance and commercial general liability insurance set forth above, **CONSULTANT** further agrees to purchase and maintain at all times during the performance of services under this Agreement insurance coverage as follows:

- (a) Worker's Compensation Insurance as provided by North Carolina law which said policy shall also afford coverage to **CONSULTANT** for employer's liability.
- (b) Automobile liability insurance with \$1,000,000.00 combined single limit for each accident covering bodily injury and property damage.
- (c) The CGL policy required above shall include independent contractor liability coverage.
- (d) The CGL policy required above shall provide **CONSULTANT** with products and completed operations insurance, said coverage to be written on an occurrence basis, with coverage extended for such a period of time that suits can be filed before the running of the statute of limitations on any claim for injury to person or property due to negligence of **CONSULTANT** in the design of any building designed by the **CONSULTANT** under the terms of this Agreement.

**ARTICLE 7 - INDEPENDENT CONTRACTOR.** **CONSULTANT** is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. **CONSULTANT** shall be wholly responsible for the methods, means and techniques of performance. **CITY** shall have no right to supervise methods and techniques of performance employed by **CONSULTANT**, but **CITY** shall have the right to observe such performance.

**ARTICLE 8 - COMPLIANCE WITH LAWS.** **CONSULTANT** agrees that in performing services pursuant to this Agreement to comply with all applicable regulatory requirements including federal, state and local laws, rules, regulations, orders, codes, criteria, and standards. **CONSULTANT** shall be responsible for procuring all permits, certificates, and licenses necessary to allow **CONSULTANT** to perform services under this Agreement. **CONSULTANT** shall not be responsible for procuring permits required for the construction of any building, unless such responsibility is specifically agreed to by **CONSULTANT**.

**ARTICLE 9 - CITY'S RESPONSIBILITIES.** **CITY** will furnish to **CONSULTANT** all of



**CITY'S** requirements for the project, including, but not limited to, scope of work, program, time constraints, schedule milestones, financial constraints, design objectives and design constraints, which are available to the **CITY** or which the **CITY** can reasonably obtain to furnish to **CONSULTANT** to enable **CONSULTANT** to make a Proposal to **CITY**. Additionally, the **CITY** shall also be responsible for the following:

- (1) Make final decisions utilizing information supplied by **CONSULTANT**.
- (2) Designate personnel to represent **CITY** in matters involving the relationship between **CITY**, **CONSULTANT** and third parties.
- (3) Provide such accounting, independent cost estimating, and insurance counseling services as may be required by the project.
- (4) Provide such legal services as **CITY** may require or **CONSULTANT** may reasonably request with regard to legal issues pertaining to the project, including those which may be raised by contractors, subcontractors, vendors or other project participants.
- (5) Enter into contracts for the purchase, construction, or other services with contractors, subcontractors, and vendors.
- (6) Provide financing for the project and make all payments in accordance with the terms of the contract.

**ARTICLE 10 - OWNERSHIP OF DOCUMENTS.** All documents, including drawings and specifications prepared by **CONSULTANT** pursuant to this **AGREEMENT**, are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by **CITY** or others on extensions of the Project or on any other project. Any reuse without written verification or adaption by **CONSULTANT** for the specific purpose intended will be at **CITY'S** sole risk and without liability to **CONSULTANT**. Any such verification or adaptation will entitle **CONSULTANT** to further compensation at rates to be agreed upon by **CITY** and **CONSULTANT**.

**ARTICLE 11 - TERMINATION OF CONTRACT FOR CAUSE.** In the event of substantial failure by **CONSULTANT** to perform in accordance with the terms of this contract, **CITY** shall have the right to terminate **CONSULTANT** upon ten calendar (10) days written notice in which event **CONSULTANT** shall have neither the obligation nor the right to perform further services under this contract nor shall the **CITY** be obligated to make any further payment for work that has not been performed.

**ARTICLE 12 - TERMINATION OF CONTRACT FOR CONVENIENCE.** Upon thirty (30) calendar days' written notice to **CONSULTANT**, **CITY** may, without cause and without prejudice to any other right or remedy legally available to the **CITY**, terminate this Contract. Upon such notice, **CONSULTANT** shall have neither the obligation nor the right to perform services under this contract nor shall the **CITY** be obligated to make any further payment for work that has not been performed in accordance with the terms stated herein. In such case of termination, **CONSULTANT** shall be paid for the completed and accepted work executed in accordance with this Contract prior to the written notice of termination. Additionally, upon mutual agreement, **CONSULTANT** may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Contract, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur 30 days after the written notice is sent by the **CITY**.

**ARTICLE 13 - NONDISCLOSURE OF PROPRIETARY INFORMATION.** **CONSULTANT** shall consider all information provided by **CITY** and all drawings, reports, studies, calculations, plans, specifications, and other documents resulting from the



CONSULTANT'S performance of the SERVICES to be proprietary, unless such information is available from public sources. CONSULTANT shall not publish or disclose proprietary information for any purposes other than the performance of the SERVICES without the prior written authorization of CITY. CONSULTANT shall not make any written or verbal statement to any press or news media concerning the Project without the written authorization of CITY.

**ARTICLE 14 - NOTICE.** Any formal notice, demand, or request required by or made in connection with this agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

**TO CITY:**                    **CITY OF FAYETTEVILLE**  
ATTENTION: **CITY'S CONTACT NAME HERE**  
**CITY'S CONTACT TITLE HERE**  
433 HAY STREET  
FAYETTEVILLE, NORTH CAROLINA 28301

**TO CONSULTANT:**        **CONSULTANT'S NAME HERE**  
ATTENTION: **CONSULTANT'S CONTACT NAME HERE**  
**CONSULTANT'S CONTACT TITLE HERE**  
**CONSULTANT'S STREET ADDRESS**  
**CITY, STATE ZIP CODE**

Nothing contained in this Article shall be construed to restrict the transmission of routine communication between representatives of CONSULTANT and CITY.

**ARTICLE 15 – FORCE MAJEURE.** Neither party shall be deemed to be in default of its obligations hereunder if and *so long as* it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**ARTICLE 16 - GOVERNING LAW.** This Agreement shall be governed by the laws of the State of North Carolina.

**ARTICLE 17 - MISCELLANEOUS.**

**17.1 NONWAIVER FOR BREACH.** No breach or non-performance of any term of this Agreement shall be deemed to be waived by either party unless said breach or non-performance is waived in writing and signed by the parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance and for any such breach or non-performance each party shall be relegated to such remedies as provided by law.

**17.2 PRECEDENCE.** In the event of any conflict or discrepancy between the terms of this Agreement and the specific written authorization to proceed pursuant to this Agreement, then the written authorization to proceed shall be given precedence over this Agreement in resolving such conflicts or discrepancies. If any conflict or discrepancy is discovered by either party hereto, then the written authorization to proceed, or this Agreement, shall be modified or amended, as necessary.

**17.3 SEVERABILITY.** The invalidity, illegality, or un-enforceability of any portion or provision of this Agreement shall in no way affect the validity, legality and/or enforceability of any other portion or provision of this Agreement. Any invalid, illegal or unenforceable provision of this Agreement shall be deemed severed from this Agreement, and the balance of the Agreement



shall be construed and enforced the same as if the Agreement had not contained any portion or provision which was invalid, illegal or unenforceable. Provided, however, this section 17.3 shall not prevent this entire Agreement from being void in the event any portion or provision of this Agreement which is of the essence of this Agreement shall be deemed void as provided by law or as determined by a court of competent jurisdiction.

**ARTICLE 18 - INTEGRATED AGREEMENT.** The **CITY'S** request for Proposal, the **CONSULTANT'S** written Proposal, the **CITY'S** authorization to proceed and this General Services Agreement for Consulting Services shall be integrated into and shall become the integrated agreement between the parties. **CONSULTANT** and **CITY** agree that all prior negotiations, representations, proposals, letters, agreements, understandings, or other communications between them, whether written or oral, are hereby merged into the Agreement and that the Agreement supersedes all such prior negotiations, contracts and/or agreements. This Agreement shall not be modified unless such modifications are evidenced in writing, signed by both **CONSULTANT** and **CITY**.

**ARTICLE 19 - BENEFITS LIMITED TO PARTIES.** Nothing herein shall be construed to give any right or benefits hereunder to anyone other than **CITY** and **CONSULTANT**.

**19.1 LIMITATIONS.** **CONSULTANT'S** total liability to **CITY** under each authorization shall not exceed the total compensation paid under the authorization, or \$1,000,000, whichever is greater; any portion of liability determined to be consequential damages under this per authorization limit, shall not exceed the compensation paid under the authorization. In no event shall **CONSULTANT'S** total liability in the aggregate, for all services under this agreement, exceed \$4,000,000. limits set forth in this agreement shall apply notwithstanding any and all causes whatsoever including, but not limited to negligence (of any degree), errors, omissions, warranty, indemnity, strict liability or breach of contract, provided, however, that the foregoing limitation shall not apply to any indemnity obligations of consultant with respect to third party personal injury and death or damage to third party property.

**ARTICLE 20 – VENUE AND FORUM SELECTION.** The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

**ARTICLE 21 - E-VERIFY.** **CONSULTANT** acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. **CONSULTANT** further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). **CONSULTANT** pledges, attests and warrants through execution of this contract that **CONSULTANT** complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by **CONSULTANT** shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this contract.

**ARTICLE 22 – MORALITY CLAUSE.** If, in the sole opinion of the **CITY**, at any time



**CONSULTANT** or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the **CITY** or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the **CITY'S** finances, public standing, image, or reputation or are embarrassing or offensive to the **CITY** or may reflect unfavorably on the **CITY** or are derogatory or offensive to one or more employee(s) or customer(s) of the **CITY**, the **CITY** may immediately upon written notice to **CONSULTANT** terminate this Contract, in addition to any other rights and remedies that the **CITY** may have hereunder or at law or in equity.

**ARTICLE 23 – PROTEST.** Protest related to this procurement must be addressed to the Purchasing Manager for City of Fayetteville, 433 Hay St, Fayetteville, NC 28301 and shall be received, in writing, within 2 calendar days of bid award. Responses will be in writing by email and first-class mail not later than (7) calendar days following receipt of said protest by the Purchasing Manager.

**ARTICLE 24 - IRAN DIVESTMENT ACT CERTIFICATION.** As mandated by N.C.G.S. 147-86.59(a), **CONSULTANT** hereby certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. **CONSULTANT** further certifies that in accordance with N.C.G.S. 147-86.59(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. **CONSULTANT** certifies that the signatory to this General Services Agreement is authorized by the **CONSULTANT** to make the foregoing statement.

**ARTICLE 25 - CITY'S TERMS SUPERSEDE.** To the extent a conflict exists between the terms of this Agreement and the terms and conditions in any of the attachments to the Agreement, the terms of this Agreement shall govern.

**ARTICLE 26 – SURVIVAL OF TERMS.** All warranties, covenants, and representations contained within this contract and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this contract. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this contract or other applicable work undertaken in furtherance of this contract.

[Signature page to follow]



**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized representatives effective the day and year first above written.

**CITY OF FAYETTEVILLE,  
NORTH CAROLINA**

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Douglas J. Hewett, ICMA-CM  
City Manager

**CONSULTANT'S NAME HERE**

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_